90-1860

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida,

Petitioner,

vs.

EDITH A. MILES, on behalf of herself and others similarly situated,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does a charge which is authorized by the federal regulations but which has been improperly assessed against a tenant of public housing become rent for the purposes of determining whether the tenants total rent exceeds the rent ceiling imposed by the provisions of the Brooke Amendment thereby creating a federal right of action in the tenant to contest the assessment of routine charges?

Does a charge, assessed against a tenant of public housing, which is not specifically set forth in 24 C.F.R. § 966.4, become rent for the purposes of determining whether the tenants' total rent exceeds the rent ceiling imposed by the provisions of the Brooke Amendment thereby creating a federal right of action in the tenant to contest the assessment of routine charges?

Is the nature of an eviction action so coercive that tenants of public housing cannot consent to the payment of court costs as part of a settlement of the eviction action thereby preventing amicable and reasonable settlement of eviction actions?

LIST OF PARTIES

Petitioner is Metropolitan Dade County, a political subdivision of the State of Florida and was the Appellant before the Circuit Court of Appeals.

Respondents are Edith Miles, a public housing tenant, and the class of tenants defined as all past and present tenants of Dade County's public housing who had been charged court costs despite the fact that eviction proceedings brought against them were dismissed or otherwise settled without a judicial award of court costs.

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OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is reported at 916 F.2d 1528 and is reprinted in the Appendix hereto as item 1 (hereafter "App.-___").

The Order Granting Motion to Certify Class and Motion to File Amended Complaint, Order Granting Summary Judgment and Partially Decertifying Class and the Final Judgment are not reported. They are reprinted as App.- 2, App.- 3, and App.- 4, respectively.

JURISDICTION

The District Court for the Southern District of Florida granted summary judgment against Dade County on February 8, 1989 and issued Final Judgment on April 3, 1989.

The Eleventh Circuit affirmed the lower court by opinion dated November 9, 1990. Dade County filed a timely Motion for Rehearing which was denied on March 4, 1991.

Dade County seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

1. 42 U.S.C. § 1437a(a)(1)

2. 24 C.F.R. § 913.102, 24 C.F.R. § 966.6(h)

The full text of the forgoing are contained in the appendix.

STATEMENT OF THE CASE

This is a class action suit filed under 42 U.S.C. § 1983 by a public housing resident on behalf of herself and others similarly situated as a result of Dade County's policy of charging tenants, against whom eviction actions had been filed, court costs, regardless of the outcome of the eviction case. The plaintiff, Edith Miles, was charged court costs even though an eviction action which was brought against her was voluntarily dismissed as having been improperly filed.

The parties entered into the following stipulation of fact upon which the District Court entered its judgment:

> Plaintiff Edith Miles is a citizen of the United States and a resident of Dade County, Florida. She is a 73 year old widow who resides by herself in a public housing unit owned and operated by defendant (hereinafter Dade County or DCHUD). She has resided in Dade County public housing at least since 1974.
>
> On August 16, 1986 Miles was served with a summons and complaint for removal of tenant filed by Dade County in County Court. The eviction action against Miles was without merit and Dade County could not, as a matter of law, have prevailed in the action. On October 3, 1986 Dade County filed a unilateral voluntary dismissal of the eviction action without receiving an award of costs.
>
> On her November, 1986 rent statements Miles was billed $41.50, the amount of the filing fee. The bill was the first notice to Miles that she was expected by DCHUD to pay the court costs. The bill itself contained no notice of a right to challenge the court costs. Miles received no

other notice of a right to challenge the court cost charges.

Upon receipt of the bill Miles went to the office of the project manager to complain that she did not owe the bill. She was told by the project manager or his designee that she must pay the charge or be subject to eviction for non-payment of rent.

At all times (up until April 27, 1987) it was the policy and practice of defendant to bill, and collect, court cost charges from tenants for eviction actions even though the particular eviction action was dismissed or settled without an award of court costs. A tenant who did not pay the court costs charge after being billed would be subject to eviction for non-payment of rent. Defendant no longer adheres to this policy and no longer bills tenants for court costs without judicial award.

The class (all tenants, past or future, charged for court costs without a judicial award) is so numerous that joinder of all members is impracticable. (There are over 3,000 tenants in the past who have been billed for court costs without a court order).

Various project managers of DCHUD would testify that as a matter of general practice they orally informed tenants that they would be billed for court costs at the time the project managers accepted rent from such tenants after the particular eviction action was commenced. There was no written policy requiring project managers to inform tenants. It is impossible to know how many tenants were so orally informed. The project managers do not recall any specific tenants who were so informed. Project managers did not make written documentation if they so orally informed a tenant.

The decision to bill tenants for court costs was an automatic administrative function. All tenants against whom an eviction action was filed were automatically billed for court costs.

Dade County has a record of all tenants who had been billed for court costs and the amount of each such billing.

When a tenant is billed for court costs the tenant does not receive notice of a right to file a grievance or to challenge the imposition of that charge. The only written notification of the court cost charge is a line on the tenant's regular monthly rent statement.

The court cost charges to tenants, if deemed rent, violate the rent ceilings imposed by the Brooke Amendment to the United States Housing Act of 1937.

The named plaintiff, Edith Miles, was entitled to relief in this case—restitution of the $41.50 she paid in court cost charges. Plaintiff received a rent credit in April of 1988 covering the reimbursable amount.

The District Court found that the court costs amounted to rent and therefore the rent ceiling set forth in the Brooke Amendment to the United States Housing Act of 1937 had been violated. 42 U.S.C. § 1437a(a)(1). The court also determined that the County had effected a taking without adequate procedural due process by placing the charge on the tenant's monthly statement and the tenant's subsequently paying the charge.

The Eleventh Circuit decided it did not need to address the due process finding of the District Court but affirmed the Brooke Amendment violation. In so doing it found that under 24 C.F.R § 966.6(h) the County could not

charge court costs to a tenant without the tenant's having lost the eviction case and a court having awarded costs to the County. It found that a tenant could not consent to pay court costs as part of a settlement of an eviction action alternatively because the regulations required a judicial award or because the eviction process was so coercive that the tenant could not agree to pay the court costs.[1] Since the tenant could not consent to pay court costs, any settlements entered into which included the payment of court costs were void. It then found that since the charge was not properly assessed to the tenant it became rent even though the charge is an authorized charge if correctly assessed. Implicit in this is the proposition that any authorized charge which is improperly assessed becomes rent thereby creating a federal right of action in tenants to dispute any charge placed on their statement which they feel is improper.

Judge Cox, in a dissent, felt that there was nothing to prohibit the County and the tenants from entering into settlements of eviction cases which included the payment of court costs. He felt that the majority opinion prohibited amicable resolution of eviction actions. He further felt that the class had been improperly certified to include people who had settled their eviction action with an agreement to pay the court cost charges. This results in

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[1] If the eviction process is so coercive that the tenant cannot consent to pay court costs as part of a settlement it is reasonable to assume that any agreed settlement reached by the parties would be tainted by the coercive atmosphere. The effect of this is to prohibit settlements in eviction cases involving public housing tenants.

the tenants, under these circumstances, receiving a windfall in the form of a return of court costs which the tenant had agreed to pay.

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE ELEVENTH CIRCUIT IN FINDING THAT COURT COST CHARGES ARE RENT CONFLICTS WITH THIS COURT'S DECISION IN *WRIGHT v. CITY OF ROANOKE REDEVELOPMENT AND HOUSING AUTHORITY*[2]

The Eleventh Circuit determined that court costs were a charge which the County could not assess on its own (i.e. without a court order) and which the tenants could not consent to pay due to the coercive nature of the eviction proceeding. Because of this, court costs could not be considered an "other miscellaneous charge". 24 C.F.R. § 913.102. Section 913.102 of the regulations contains the definitions of "tenant rent" and of "total tenant payment". The regulation specifically provides that "miscellaneous charges" are not considered part of the "total tenant payment" and therefore would not be considered in any calculation to determine whether the rent limitations of the Brooke Amendment had been exceeded.

The Eleventh Circuit took the position that if the court cost charges were not "other miscellaneous charges" then they could only be rent. The Eleventh Circuit then looked to the definition of "other miscellaneous charges" to decide if the court cost charges were rent. This method of determination and the result reached

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[2] 479 U.S. 418, 107 S.Ct. 166, 93 L.Ed.2d 781 (1987).

is contrary to this Court's opinion in *Wright v. City of Roanoke Redevelopment and Housing Authority, supra.*

In *Wright* this Court appropriately looked to the definition of rent to determine what rent is. This Court decided that since the regulatory definition of rent included utilities (the charges at issue in that case) the Brooke Amendment was implicated. In the instant case, however, the regulatory definition of rent includes no reference to court cost charges. It is only through deciding that the charges are not authorized "miscellaneous charges" that they became rent. To define "rent" on the basis of what is *not* a "miscellaneous charge" is to deny the true definition of rent. That being "consideration paid for the use or occupation of property". *Wright, supra,* at 776 (dissent of Justice O'Connor). The Eleventh Circuit's opinion, by defining rent in this manner conflicts with this Court's opinion in *Wright.*

If the opinion of the Eleventh Circuit is not overruled, it is probable that any allowable charge to a tenant that is improperly assessed will become rent. That will result in the tenant having a federal right of action to contest any charge the tenant feels is improper in the federal courts. This type of landlord-tenant dispute should be heard in the state court with other landlord-tenant cases. The state court is better able to deal with this type of dispute and currently has mechanisms set up to deal with it.

THE ELEVENTH CIRCUIT'S FINDING THAT TENANTS COULD NOT CONSENT TO PAY COURT COSTS AS PART OF A SETTLEMENT TENDS TO PROHIBIT SETTLEMENTS IN EVICTION CASES AND, AS A RESULT, SO FAR DEPARTS FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION

The Eleventh Circuit opinion has prohibited any settlement with the tenant which includes as a condition that the tenant pay the court costs incurred by the County. It determined that the applicable regulation required that there be a court award of the costs or alternatively that the tenant was incapable of consenting to the charges due to the coercive nature of the eviction procedures.

A.

COURT COSTS ARE NOT PROHIBITED FROM BEING ASSESSED AS PART OF A SETTLEMENT AGREEMENT

Settlement of adversary proceedings is highly favored by the courts of the United States and should be upheld whenever possible. *Pearson v. Ecological Science Corp.*, 522 F.2d 171 (5th Cir. 1975), *reh. denied*, 525 F.2d 1407 (5th Cir. 1975), *cert. denied, Skydell v. Ecological Science Corp.*, 425 U.S. 912, 96 S.Ct. 1508, 47 L.Ed.2d 762 (1976). There is no doubt that under the regulations, Dade County did not have the authority to unilaterally assess court charges. There is, however, no prohibition in the regulations concerning settlement.

The regulation upon which the Eleventh Circuit relied, 24 C.F.R. § 966.6(h), prohibits a Public Housing

Authority from including in a lease a provision whereby the tenant agrees to pay court costs or attorney's fees even if the tenant prevails in the action. The regulation then goes on to say, "Prohibition of this type of provision does not mean that the tenant as a party to the lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit." 24 C.F.R. § 966.6(h). The Eleventh Circuit determined that this language "if he loses the suit" was a requirement that a judgment be obtained prior to the assessment of court costs and therefore a tenant could not consent to the court charges as part of a settlement. This flies in the face of logic.

In any settlement, one of the parties agrees to do something that could only have been imposed upon them by a court, absent the agreement. Whether it be the payment of money, the return of property, or an agreed injunction, absent the agreement, it could only have been accomplished through a court order. The purpose of settlements is to amicably accomplish that which a court can do without the uncertainties of what the court might do. To prohibit court cost charges as a provision of a settlement agreement because one ordinarily needs a court order to impose court cost charges severely and unnecessarily inhibits amicable and reasonable settlements in eviction actions.

B.

THE NATURE OF AN EVICTION IS NOT SO COERCIVE AS TO PROHIBIT SETTLEMENT WITH THE TENANT

The Eleventh Circuit, in its opinion, determines that the agreements entered into by tenants to pay court cost

charges as part of the settlement of their eviction actions are void because the tenants are faced with eviction. This results from a coercive atmosphere which negates any ability of the tenant to consent to the charge. The court relied on *Escalera v. New York City Housing Authority*, 425 F.2d 853 (2nd Cir.), *cert. denied*, 400 U.S. 853, 91 S.Ct. 54, 27 L.Ed.2d 91 (1970).

The *Escalera* case involved tenants paying charges that had been assessed instead of contesting them. Since the only method available to the tenant to contest the assessed charges in the *Escalera* case was to not pay the charge and risk an eviction case being filed, the Second Circuit felt that the voluntary payment of the charges by the tenants was actually the result of coercion. The Eleventh Circuit here has applied this rationale not to the threat of a prospective eviction action but to existing eviction actions to say that existing eviction actions are so coercive that the tenants cannot consent to pay court cost charges. If, in fact, the eviction action is so coercive that the tenant cannot consent to a settlement which requires that she pay court cost charges, is it not also so coercive as to prohibit any settlement agreements by the tenant? Are court cost charges so significant that they alone are tainted by this coercion?

If the Eleventh Circuit's opinion is allowed to stand, settlements in all eviction cases will be suspect due to the coercive nature of the eviction process. This will have the practical effect of prohibiting settlement of eviction actions in public housing cases. Dade County alone has 12,000 units of public housing. With the allowed 10%

delinquency rate, 1,200 units are potentially under eviction at any time. The number nationwide is staggering.

CONCLUSION

The Eleventh Circuit's opinion unjustly requires Dade County to repay court cost charges paid by tenants who consented to pay the charge as part of a settlement agreement. The opinion conflicts with this Court's ruling in the *Wright* case and is a drastic departure from the accepted and usual course of judicial proceedings. This departure is a matter of exceptional public importance, in light of the extremely large number of public housing tenants nationwide, justifying review by this Court in the exercise of its powers of supervision.

Respectfully submitted,

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APPENDIX

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5. 42 §1437a(a)(1).....App. 32

6. 24 C.F.R. §913.103.....App. 33

7. 24 C.F.R. §966.6(h)..... App. 34

Edith A. MILES, on behalf of herself and others similarly situated,

Plaintiff-Appellee,

v.

METROPOLITAN DADE COUNTY,

Defendant-Appellant.

Edith A. MILES, on behalf of herself and others similarly situated,

Plaintiff-Appellee, Cross-Appellant,

v.

METROPOLITAN DADE COUNTY,

Defendant-Appellant, Cross-Appellee.

Nos. 89-5418, 89-5717.

United States Court of Appeals, Eleventh Circuit.

Nov. 9, 1990.

Robert A. Ginsburg, Thomas H. Robertson, Valerie L. Rennert, Miami, Fla., for defendant-appellant.

Peter H. Barber, Legal Aid Services of Browar City, Inc., Miami, Fla., for plaintiff-appellee.

Appeals from the United States District Court for the Southern District of Florida.

Before CLARK and COX, Circuit Judges, and TUTTLE, Senior Circuit Judge.

CLARK, Circuit Judge:

Edith Miles brought this 42 U.S.C. § 1983 action against Metropolitan Dade County alleging that the County's actions in charging public housing tenants court costs charges regardless of the outcome of eviction proceedings violate the Constitution and the Brooke Amendment to the United States Housing Act of 1937, 42 U.S.C. § 1437a.[1] The district court granted Miles's motion to certify the case as a class action brought by all past, present and future tenants who had been charged court costs despite the fact that eviction proceedings brought against them were dismissed or otherwise settled without a judicial award of court costs. The court then granted summary judgment in favor of the plaintiffs on both the plaintiffs' procedural due process claim and the plaintiffs' statutory claim. Subsequently, the court entered an award of attorney fees to the plaintiffs as prevailing parties under 42 U.S.C. § 1988. The defendants appeal all three of these rulings.[2] After considering the arguments advanced by the defendants, we affirm.

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[1] The complaint alleged the following four grounds: (1) a violation of the Fifth Amendment takings clause; (2) a violation of the plaintiff's right to procedural due process under the Fourteenth Amendment; (3) a violation of the plaintiff's right to substantive due process under the Fourteenth Amendment; and (4) a violation of the Brooke Amendment.

[2] Case number 89-5418 is the appeal of the class certification and the summary judgment orders. Case number 89-5717 is the appeal of the attorney fee award. This court consolidated these cases on August 25, 1989.

BACKGROUND

The district court granted the plaintiff's motion to have the case certified after finding that the "party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed.R.Civ.P. 23(b)(2). The defendants opposed class certification, arguing that the class definition included class members who were not entitled to relief. The court, however, did not specifically address this argument.

The parties then agreed to have the district court determine the plaintiffs' summary judgment motion on the following stipulation of facts:

> Plaintiff Edith Miles is a citizen of the United States and a resident of Dade County, Florida. She is a 73 year old widow who resides by herself in the public housing unit owned and operated by the defendant (hereinafter Dade County or DCHUD). She has resided in Dade County public housing at least since 1974.
>
> On August 16, 1986 Miles was served with a summons and complaint for removal of a tenant filed by Dade County in County Court. The eviction action against Miles was without merit and Dade County could not, as a matter of law, have prevailed in the action. On October 3, 1986 Dade County filed a unilateral voluntary dismissal of the eviction action without receiving an award of costs.
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> On her November 1986 rent statement Miles was billed $41.50, the amount of the filing fee. The bill was the first notice to Miles that she was expected by DCHUD to pay the court costs. The bill itself contained no notice of a right to

challenge the court costs. Miles received no other notice of a right to challenge the court cost charges.

Upon receipt of the bill Miles went to the office of the project manager to complain that she did not owe the bill. She was told by the project manager or his designee that she must pay the charge or be subject to eviction for non-payment of rent.

At all times (up until April 27, 1987) it was the policy and practice of defendant to bill, and collect, court cost charges from tenants for eviction actions even though the particular eviction action was dismissed or settled without an award of court costs. A tenant who did not pay the court cost charge after being billed would be subject to eviction for non-payment of rent. Defendant no longer adheres to this policy and no longer bills tenants for court costs without judicial award.

The class (all tenants, past or future, charged for court costs without a judicial award) is so numerous that joinder of all members is impracticable. (There are over 3,000 tenants in the past who have been billed for court costs without a court order.)

Various project managers of DCHUD would testify that as a matter of general practice they orally informed tenants that they would be billed for court costs at the time the project managers accepted rent from such tenants after the particular eviction action was commenced. There was no written policy requiring project managers to inform tenants. It is impossible to know how many tenants were so orally informed. The project managers do not recall any specific tenants who were so informed. Project managers did not make written documentation if they so orally informed a tenant.

> The decision to bill tenants for court costs was an automatic administrative function. All tenants against whom an eviction action was filed were automatically billed for court costs.
>
> Dade County has a record of all tenants who had been billed for court costs and the amount of each such billing.
>
> When a tenant is billed for court costs the tenant does not receive notice of a right to file a grievance or to challenge the imposition of that charge. The only written notification of the court cost charge is a line on the tenant's regular monthly rent statement.
>
> The court cost charges to tenants, if deemed rent violate the rent ceilings imposed by the Brooke Amendment to the United States Housing Act of 1937.
>
> The named plaintiff, Edith Miles, was entitled to relief in this case – restitution of the $41.50 she paid in court cost charges. Plaintiff received a rent credit in April of 1988 covering the reimbursable amount.

R.1-84 at 2-4.

Based on this stipulation, the plaintiffs moved for summary judgment on the claims of a *substantive* due process violation and a Brooke Amendment violation. The district court granted the motion on the basis of plaintiffs' *procedural* due process and Brooke Amendment claims. After granting summary judgment, the court entered an injunction ordering the County to issue rent credits to all class members who remained Dade County tenants and to refund the money collected from those

class members who are no longer tenants.[3] Finally, the court ordered the defendant to pay the tenants' attorney fees in the amount of $12,437.50 and costs in the amount of $1,321.73.

The defendant appeals all three of these orders – class certification, summary judgment, and attorney's fees. The plaintiffs, although dismissing their cross appeal, argue that the district court's decision can also be affirmed on the basis of the substantive due process claim. Because we find that the County's policy violates the Brooke Amendment, we decline to address the constitutional claims. In addition, since the appeal on the issue of attorney's fees was based solely on the County's argument that the plaintiffs' improperly prevailed, our affirmance on the merits requires us to affirm the award of attorney fees.

DISCUSSION

A. *The Brooke Amendment*

As amended, the Brooke Amendment to the Housing Act of 1937 (the "Act") provides:

> (1) . . . [A] family shall pay as rent for a dwelling unit assisted under this chapter . . . the highest of the following amounts, rounded to the nearest dollar:
>
> (A) 30 per centum of the family's monthly adjusted income;

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[3] Because the County abandoned the practice, the Class definition was amended to delete reference to future tenants.

> (B) 10 per centum of the family's monthly income; or
>
> (C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

42 U.S.C. § 1437a(a)(1) (Supp. V 1987).

In support of its conclusion that the County's court costs charge policy violates the Brooke Amendment, the district court reasoned that the court costs charges amount to rent within the meaning of the Brooke Amendment because the County added the charges to the tenants' rent and would move to evict tenants "for nonpayment of rent" if the charges were not paid. The court then granted summary judgment to the tenants on their Brooke Amendment claim pursuant to the parties' stipulation that if the court costs charges amount to rent within the meaning of the Brooke Amendment, the County's policy violates the Brooke Amendment. The defendant challenges the district court's finding that the court costs charge amounts to rent and argues that a court costs charge is a proper charge not subject to the Brooke Amendment limits. In addition, the County argues that the fact that the charge is made as the result of eviction proceedings does not make it rent under the Act. The plaintiffs, on the other hand, argue that unauthorized court costs charges are not excluded from the Brooke Amendment limitations.

The Brooke Amendment itself does not define rent. However, the Department of Housing and Urban Development ("HUD") regulations promulgated under the Act define "tenant rent" as "[t]he amount payable monthly by the Family as rent to the [Public Housing Authority]." 24 C.F.R. § 913.102 (1989). "Tenant rent" is calculated by taking "total tenant payment" and subtracting any applicable "Utility Allowance." *Id.* For all tenants, "total tenant payment" does not include "charges for excess utility consumption or other miscellaneous charges (see section 966.4 of this chapter)." *Id.* Therefore, the question in this case is whether court costs are not included in the calculation of tenant rent because they are "other miscellaneous charges" within the meaning of 24 C.F.R. § 913.102.[4]

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[4] The district court treated the court costs charge as rent because "if the tenant[s] failed to pay [the court costs charge,] they were evicted for non-payment of rent." District Court Opinion at 17. The plaintiffs had argued below that both federal and state law provide different procedures for eviction for non-payment of rent than for breach of other lease terms. *See* 42 U.S.C. § 1437d(*l*)(3) (Supp. V 1987) (PHA must give 14-day notice for termination of lease for failure to pay rent but must give 30-day notice for other causes); 24 C.F.R. § 966.4(1) (1989) (same). Apparently, the County was using the procedures for evicting a tenant who did not pay rent when the court costs charges were not paid. Even if the County's use of these procedures was incorrect, this fact does not transform a miscellaneous charge into rent. The regulations explicitly separate tenant charges into two categories – miscellaneous charges not subject to the 30% limitation and rent charges included in the 30% income limits. These explicit regulations imply that the drafters did not intend to give the PHA's discretion to decide whether a particular charge is "rent."

The term other miscellaneous charges is not defined by the regulations. Because section 913.102 makes a parenthetical reference to section 966.4, we turn to that provision to determine which charges are "miscellaneous charges." Section 966.4 contains several items that a Public Housing Authority ("PHA") is permitted to charge its tenants in addition to their monthly rent. Permissible charges include: excess utilities fees, excess damage fees, late payment penalties, and security deposits. 24 C.F.R. §§ 966.4(b)(2), 966.4(b)(3) (1989). Section 966.4 makes no mention of court costs charges.

The County takes the position that the reference to section 966.4 in section 913.102 is meant to provide only an illustrative list of "miscellaneous charges" rather than an exhaustive one, but cites no authority for this proposition. Instead, the County argues that other provisions in the regulations presuppose that court costs charges are permissible. In particular, the County points to section 966.6(h), which provides:

> [Tenant leases shall not include a provision] that the tenant agrees to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court determines that the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant as a party to the lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.

24 C.F.R. § 966.6(h) (1989).

Thus, while section 966.6(h) prohibits lease provisions that allow a PHA to charge court costs whenever the PHA decides to take legal action against the tenant, that section explicitly allows the tenant to be "obligated

to pay attorney fees or other costs if he loses the suit." Section 966.58 requires that a PHA notify the tenant in writing that "he may be required to pay court costs and attorney fees" if he fails to vacate the unit after receiving proper notice. The County argues that these provisions contemplate that under some circumstances a court costs charge is allowed. We agree that the fact that the regulations contemplate court costs charges in some instances forecloses an interpretation of the regulations that would totally prohibit a PHA from collecting court costs charges. Nevertheless, it is possible to recognize that court costs charges are permissible without approving the defendant's policy of automatically charging court costs whenever it brings suit. After considering the competing arguments, we conclude that while the regulations prohibit the PHA itself from imposing court cost charges on the tenant, they do not prohibit the PHA from collecting the charge when it is imposed by a court.

This interpretation is supported by several of the regulations. Section 966.6(h) prohibits a PHA from requiring tenants to agree to pay attorney's fees or court costs when the tenant prevails in legal actions taken by the PHA against the tenant. However, section 966.6(h) allows a PHA to require tenants to agree to pay attorney's fees or court costs whenever the tenant *loses* in a legal action brought by the PHA. As this section makes clear, the county could not have included a provision in the tenant's lease allowing it to collect court costs simply as the result of its filing suit against the tenant. Instead, section 966.6(h) evidences an intent by HUD to allow the imposition of a court costs charge *only* when the PHA receives a

court judgment against the tenant assessing costs. Therefore, the County's automatic imposition of court costs charges upon the filing of suits against tenants is prohibited by section 966.6(h).

The County also argues that the addition of court costs charges to a tenant's bill does not increase the tenant's "rent" because "rent" under the Brooke Amendment is generally defined as the compensation paid by a tenant for the use of land. *See Peterson v. Oklahoma City Housing Authority*, 545 F.2d 1270, 1274 (10th Cir. 1976) (citing cases). Therefore, court costs charges are properly treated as "other miscellaneous charges" within the meaning of section 913.102. While we are generally in agreement with the County's definition of "rent," in *Wright v. City of Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 430 & n. 11, 107 S.Ct. 766, 774 & n. 11, 93 L.Ed.2d 781 (1987), the Supreme Court recognized that HUD's regulations implementing the Brooke Amendment are entitled to deference by the courts. Given that HUD has enacted a comprehensive regulatory scheme to determine when a tenant charge is rent under the Brooke Amendment, we are reluctant to find that a charge is excluded from the Brooke Amendment limitations unless that charge is explicitly included in § 966.4(b). In *Wright*, the Court noted that the purpose of the Act is "to provide affordable housing for low-income people." *Id.* at 420, 107 S.Ct. at 769. It is because the Court found that the "intent to benefit tenants is undeniable," that it held that the limitations found in the Brooke Amendment and the HUD regulations constitute rights enforceable under section 1983. *Id.* at 430, 107 S.Ct. at 774.

In addition, since state law allows the recovery of court costs from the tenant only after a "judgment or decree" has been entered in the landlord's favor, it provides no authority for the County's actions. *See* Fla.Stat.Ann. § 83.48 (West 1987). We note that parties in both state and federal courts are required to bear their own court costs absent an order from the court to the contrary. *See* Fed.R.Civ.P. 54(c) (costs to be taxed in favor of prevailing party by the clerk subject to review by court); Fla.Stat.Ann. § 57.041(2) (West 1969) ("Costs may be collected by execution on the judgment or order assessing costs."). Thus, we can find no explicit authority for the County's automatic charge.

Finally, we reject the argument that the tenants' consent to the charge allows the county to collect it. First, we note that section 966.6(h) forbids an *"agree[ment]* to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant." The clear purpose of the regulation relating to permissible tenant charges is to restrict the types of agreement that a PHA and its tenants can make. In addition, the stipulation establishes that the County cannot show which or how many tenants "consented" to the charge. Finally, even if the tenants did consent, the consent was in the face of a threatened eviction. The Second Circuit has recognized the coercive nature of such a threat:

> Nor is it persuasive . . . to argue that a tenant may challenge the additional rent charges by refusing to pay them and by defending in court against the PHA's suit for nonpayment of rent. The cost of defending in court and the hazards envisioned by a public housing tenant in refusing to pay rent, would probably dissuade

> all but the boldest tenant from contesting an 'additional rent' charge in this manner.

Escalera v. New York City Housing Authority, 425 F.2d 853, 864 (2d Cir.), *cert. denied*, 400 U.S. 853, 91 S.Ct. 54, 27 L.Ed.2d 91 (1970). It would be inconsistent with the purpose of the Act and the regulations to allow the tenants to "consent" to a charge that the County is not authorized to impose. Thus, we hold that court costs charges are not authorized charges that a PHA itself may impose on a tenant; and therefore, the charges are not excluded from the Brooke Amendment limits as "miscellaneous charges." The County may, however, recover court costs imposed by a court against a tenant as the losing party in an action brought by the County.

B. *Class Certification*

The defendant also challenges the district court's actions in certifying this case as a class action. The County argues that because some of the tenants were delinquent in their rent, the eviction actions brought against them were legitimate. Therefore, it was proper for the county to collect court costs when these tenants settled their eviction actions and agreed to pay both the back rent and the court costs charges. Based on this argument that some of the class members are entitled to relief and others are not, the County seeks to have the class certification reversed. Additionally, the County argues that the fact that some of the class members agreed to the charge shows that they may object to class action, thereby creating a conflict among the class members.

The County is correct in arguing that class certification is improper when the class includes either a group with a large number of members who are not entitled to relief or a group with members who disagree about the propriety of relief. The claims of a class representative must be typical of the claims of the class. Fed.R.Civ.P. 23(a)(3). In addition, class conflicts may defeat an otherwise proper class. In *Peterson v. Oklahoma City Housing Authority*, 545 F.2d 1270 (10th Cir. 1976), the court affirmed the district court's refusal to certify a class of public housing tenants when there was a disagreement among the class members over the desirability of the security deposit requirement being challenged by the class representatives. *Id.* at 1273.

The County's arguments fail, however, because these settled principles are inapplicable in this case. The class as currently certified by the district court consists of all past and present tenants who have been charged court costs despite the fact that eviction proceedings brought against them were dismissed or otherwise settled without *judicial imposition* of court costs. As we have noted above, the court costs charges imposed *by the County* violate HUD's Housing Act regulations because a PHA has no authority to bill a tenant for court costs when no judgment has been entered imposing the charge on the tenant. Thus, the fact that the eviction actions brought against some class members were meritorious is irrelevant, as no court costs were imposed by a *court* against any class member. Additionally, unlike the situation in *Peterson*, the County has shown no evidence that some members of the class oppose the action, and we cannot see any realistic

possibility that a conflict exists.[5] *See Horton v. Goose Creek Ind. School Dist.*, 690 F.2d 470, 485-86 (5th Cir. 1982) (conflict can exist in class action (1) when record shows hard evidence of actual disagreement or (2) when class is such that court can imply that "a realistic possibility of antagonism" exists), *cert. denied*, 463 U.S. 1207, 103 S.Ct. 3536, 77 L.Ed.2d 1387 (1983). The class certification was not an abuse of discretion.

CONCLUSION

We affirm the district court's grant of summary judgment to the plaintiffs on grounds that the County's actions violated the Housing Act regulations. In addition, we find no error in the certification of this case as a class action. The judgment of the district court is therefore AFFIRMED.

COX, Circuit Judge, concurring in part and dissenting in part:

I concur in the result reached by the majority to the extent that they find illegal the billing of court costs to tenants against whom eviction actions were *improperly* brought. I find it unnecessary to consult either the Brooke Amendment or HUD regulations to reach this conclusion. No one suggests that there is a provision in the lease that would permit Dade County to *improperly* sue its tenant

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[5] Indeed, the action does not harm the tenants in any manner. Any tenant who "agreed" to pay the unauthorized charge did so under the threat of eviction. Under these circumstances, we see no realistic possibility that such tenants would oppose this action to recover the unauthorized charge.

for eviction and then bill the tenant for court costs. In the absence of such a provision in the lease, there would appear to be no basis under Florida landlord and tenant law for Dade County to bill the tenant for court costs.

Dade County contends, however, that there are two groups of tenants in the class: one group against whom eviction actions were *properly* brought and another group against whom eviction actions were *improperly* brought. Dade County further argues that those tenants against whom eviction actions were *properly* brought are not entitled to relief under the Brooke Amendment and HUD regulations. I agree, and to the extent that the majority opinion holds otherwise, I respectfully dissent. The class, as defined, includes tenants against whom eviction actions were *properly* filed and from whom rent was thereafter accepted, with the tenants consequently being billed for court costs. Stated otherwise, the class definition includes defaulting tenants allowed to "cure" their default and pay court costs actually incurred by Dade County in the eviction proceedings. Permitting such tenants to "cure" defaults in this way does not, in my view, violate either the Brooke Amendment or HUD regulations. Neither the Brooke Amendment nor HUD regulations explicitly address this issue.

The plaintiff, responding to Dade County's contention that the class includes tenants against whom eviction actions were *properly* brought, present two arguments. First, the plaintiff argues that the stipulation does not refer to any tenants who were delinquent in their rent payments or otherwise in default. The stipulation is indeed silent on this subject, and from it we learn only that one tenant – the plaintiff Miles – had an eviction

action filed against her that was without merit. We are left to speculate about how many members of the plaintiff class are in one group and how many are in the other. The problem with the plaintiff's argument – that the stipulation does not tell us who of these several thousand tenants had eviction actions properly filed against them – is that it would require the defendant to prove how many members of the plaintiff class are *not* entitled to relief. This misplaces the burden of proof. In a case where *all* members of the plaintiff class have received relief, it is not sufficient for the plaintiff to say that the defendant has not proved how many members of the class are *not* entitled to relief.

The plaintiff's second argument is that the stipulation does not prove that there were any settlement agreements that included an agreement to pay court costs. While that is true, the class includes all past and present tenants who have been charged court costs despite the fact that eviction proceedings brought against them were dismissed or otherwise settled without judicial imposition of court costs.[1] Again, the plaintiff misplaces the burden of proof. Since the class includes tenants who settled, it is the plaintiff's burden to establish entitlement to relief.

Where eviction proceedings have been properly initiated against a tenant, I find nothing in the Brooke Amendment or HUD regulations that prohibits the amicable disposition of the eviction action under terms that

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[1] The complaint as last amended alleges that this is an action "challenging defendants' policy as a result of eviction actions even though the eviction action was *dismissed* or *compromised* without an award of court costs." (Emphasis added.)

call for the defaulting tenant to pay court costs. The majority no doubt mean well, but I fear that the result in this case may discourage the termination of litigation. If in the future Dade County wants to collect court costs necessarily and legitimately incurred, it may well say "see you in court" to a tenant who wants to cure a default. If it does, it is clear under HUD regulations that it can then collect judicially imposed court costs. *See* 24 C.F.R. § 966.6(h) (1989).

APPENDIX 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 87-1930-CIV-SPELLMAN

SEP 14 1988

EDITH A. MILES, on behalf of her and others similarly situated,

Plaintiff,

-vs-

METROPOLITAN DADE COUNTY,

Defendant.
_____/

ORDER GRANTING MOTION TO CERTIFY CLASS AND MOTION TO FILE AMENDED COMPLAINT

THIS CAUSE comes before the Court upon Plaintiff's Motion to Certify Class and Motion for a Leave to File an Amended Complaint.

There are two major issues in the Motion to Certify Class: 1) whether this is an appropriate action for federal court; and 2) whether this class can be certified under Rule 23(b)(2), Federal Rules of Civil Procedure.

First, this case properly raises issues under the United States Housing Act of 1937, 42 U.S.C. 1437(a)(a). The Defendant's argument that it has already stopped the practice of collecting court costs is the very issue to be determined under 42 U.S.C. 1437(a)(a). Further, the Plaintiff has raised issues under both the Fifth and Fourteenth

Amendments of the United States Constitution. Accordingly, this Court has subject matter jurisdiction.

Second, this class can be certified under Rule 23(b)(2), Federal Rules of Civil Procedure (1988). The class will consist of all tenants, past or future, charged for court costs without a judicial award. The Plaintiff alleges that this class will number in the thousands. The relief requested is two-fold: 1) to stop the practice of collecting any court costs not judicially awarded; and 2) to reimburse those who have paid such court costs in the past by means of rent credits. The reimbursement of court costs by use of rent credits is a mandatory injunction and not a damage award. Therefore, both of the requested remedies are equitable and this case is not a case wherein "final relief relates exclusively or predominately to money damages," but satisfies the requirement that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. . . . " Rule 23(b)(2), Federal Rules of Civil Procedure (1988).

ORDERED AND ADJUDGED that the Motion to Certify Class is GRANTED.

It is further ORDERED that the Motion to File Amended Complaint is also GRANTED.

DONE AND ORDERED in Chambers at Miami, Florida this 14 day of September, 1988.

/s/ Eugene P. Spellman
UNITED STATES
DISTRICT JUDGE

cc: all counsel of record

APPENDIX 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 87-1930-CIV-SPELLMAN

FEB 8

EDITH A. MILES, on behalf of herself and others similarly situated,

Plaintiffs,

-vs-

METROPOLITAN DADE COUNTY,

Defendant.

_____/

ORDER GRANTING SUMMARY JUDGMENT AND PARTIALLY DECERTIFYING CLASS

THIS CAUSE comes before the Court upon Plaintiff's Motion for Summary Judgment. This class action was brought by a resident of Dade County public housing. The Plaintiffs challenge the Defendant's past policy and practice of assessing charges against public housing tenants for court costs from prior eviction actions without authority, where the evictions were dismissed or compromised without an award of court costs. The class presently consists of all tenants, past and future, charged with court costs without a judicial award.

There are four claims for relief:

1) that the court cost charges represent a taking of the tenants' property without just compensation;

2) that there is a lack of procedural due process;

3) that there is a lack of substantive due process; and

4) that the court cost charges are additional rent in violation of United States Housing Act of 1937.

The Plaintiffs have moved for summary judgment on Counts III and IV – the lack of substantive due process and that the charges are additional rent in violation of the United States Housing Act of 1937.

STIPULATED FINDINGS OF FACT

1. The Plaintiff, Edith Miles, is a citizen of the United States and a resident of Dade County, Florida. She is a 73 year old widow who resides in a public housing unit owned and operated by the Defendant.

2. On August 16, 1986, Miles was served with a summons and complaint for removal of tenant filed by the Defendant in county court. The eviction action against Miles was without merit and the Defendant could not, as a matter of law, have prevailed in the action. On October 3, 1986, the Defendant filed a unilateral voluntary dismissal of the eviction action without receiving an award of costs.

3. On her November, 1986, rent statement, Miles was billed $41.50, the amount of the filing fee. The bill was the first notice to Miles that she was expected by the Defendant to pay the court costs. The bill itself contained no notice of a right to challenge the court costs. Miles

received no other notice of a right to challenge the court cost charges.

4. Upon receipt of the bill, Miles went to the office of the project manager to complain that she did not owe the bill. She was told by the project manager or his designee that she must pay the charge or be subject to eviction for non-payment of rent.

5. At all times (up until April 27, 1987), it was the policy and practice of the Defendant to bill, and collect, court cost charges from tenants for eviction actions even though the particular eviction action was dismissed or settled without an award of court costs. A tenant who did not pay the court cost charge after being billed would be subject to eviction for non-payment of rent. The Defendant no longer adheres to this policy and no longer bills tenants for court costs without a judicial award.

6. The class (all tenants, past or future, charged for court costs without a judicial award) is so numerous that joinder of all members is impracticable. There are over 3,000 tenants in the past who have been billed for court costs without a court order.

7. Various project managers would testify that as a matter of general practice they orally informed tenants that they would be billed for court costs at the time the project managers accepted rent from such tenants after the particular eviction action was commenced. There was no written policy requiring project managers to so inform tenants. It is impossible to know how many tenants were so orally informed. The project managers do not recall

any specific tenants who were so informed. Project managers did not make written documentation if they so orally informed a tenant.

8. The decision to bill tenants for court costs was an automatic administrative function. All tenants against who an eviction action was filed were automatically billed for court costs.

9. The Defendant has a record of all tenants who have been billed for court costs and the amount of each such billing.

10. When a tenant was billed for court costs, the tenant did not receive notice of a right to file a grievance or to challenge the imposition of that charge. The only written notification of the court cost charge was a line on the tenant's regular monthly rent statement.

11. The court cost charges to tenants, if deemed rent, violate the rent ceilings imposed by the Brooke Amendment to the United States Housing Act of 1937.

12. The named Plaintiff, Edith Miles, was entitled to relief in this case – restitution of the $41.50 she paid in court cost charges. The Plaintiff received a rent credit in April, 1988, covering the reimbursable amount.

CONCLUSIONS OF LAW

The Plaintiffs' argue that the unauthorized charges for court costs violate the Brooke Amendment to the United States Housing Act of 1937, 42 U.S.C. § 1437a(a), because the imposition of the charges caused the affected tenants' rents to exceed the 30% of adjusted income ceiling. The Brooke Amendment provides that tenants pay

fully 30% of their income but no more. Any excess charge puts the total payment for housing over the maximum. Tenants have a private right of action to enforce this provision. *Wright v. Roanoke Redevelopment and Housing Authority,* 479 U.S. 418 (1987).

Here, the facts clearly show that the Defendant charged court costs and added those charges to the tenants' rent. If the tenant failed to pay those charges, they were evicted for *non-payment* of rent. Therefore, by its own admission, the Defendant treated the court costs like rent and for these purposed, it is rent. The parties have stipulated that if these court costs are rent, the charges violate the Housing Act. Therefore, this Court finds that, under the circumstances of this case, the charges for unauthorized court costs are rent. Summary judgment is proper.

Additionally, the stipulated facts clearly show that all tenants against whom an eviction action was filed were billed for court costs, regardless of the disposition of the case. Such costs were added to the rent. When the tenant was bill for court costs the tenant did not receive notice of a right to file a grievance or to challenge the imposition of that charge.

The Defendant proferred testimony that as a matter of general practice, the project managers *orally* informed the tenants that they would be billed for court costs. Even if this Court were to accept that such oral warnings were given, the warnings are irrelevant in the absence of any opportunity of appeal or any ability to change that which is about to be done.

The above facts were stipulated to in the parties' joint pretrial stipulation. That stipulation also delineated the issue of procedural due process. This Court has the inherent power under Rules 16 and 56, Federal Rules of Civil Procedure, to grant summary judgment on any issue presented at the pretrial conference, where no triable issue of fact remains. *Fidelity and Deposit Company of Maryland v. Southern Utilities, Inc.*, 726 F.2d 962, 963 (11th Cir. 1984). Therefore, this Court holds that even if the charges were not considered rent, and accordingly, that the rent ceiling set forth in the Housing Act was not violated, there was a lack of procedural due process and that the Defendant's actions violated the 14th Amendment. In reaching its decision, this Court accepts the proferred testimony that oral warnings were given: however, oral warnings, without more, are insufficient as a matter of law to meet the requirements of procedural due process. Here, the tenants were given no notice of any right to appeal, nor of any mechanism by which they could avoid the charges. Accordingly, this Court grants summary judgment for the Plaintiffs on the issue of procedural due process.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Motion for Summary Judgment is GRANTED. The Defendant shall issue rent credits to those tenants who have paid the unauthorized court costs. This Court retains jurisdiction to determine the award of attorney's fees and costs. The Plaintiffs shall prepare and submit a proposed Final Judgment to this Court within ten (10) days of the date of this Order.

It is further ORDERED that the class is PARTIALLY DECERTIFIED. It is no longer the policy and practice of the Defendant to bill and collect court cost charges from tenants for eviction actions where the eviction action is dismissed or settled without an award of court costs. Nor is a tenant who does not pay the court cost charge after being billed subject to eviction for non-payment of rent. Thus, it is no longer necessary that *future* tenants be part of the class.

DONE AND ORDERED in Chambers at Miami, Florida this 8 day of February, 1989.

/s/ Eugene P. Spellman
UNITED STATES
DISTRICT JUDGE

cc: all counsel of record

APPENDIX 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 87-1930-CIV-SPELLMAN

EDITH A. MILES, on behalf of herself and others similarly situated,

Plaintiff,

-vs-

METROPOLITAN DADE COUNTY,

Defendant.

_____/

FINAL JUDGMENT

In accordance with the Order Granting Summary Judgment and Partially Decertifying Class filed in this case on February 8, 1989 and Order Granting Motion to Modify Order Granting Summary Judgment filed on March 2, 1988 it is

ORDERED:

1. Judgment is hereby entered in favor of plaintiff and the class and against defendant on plaintiff's second claim for relief (procedural due process) and plaintiff's fourth claim for relief (United States Housing Act of 1937).

2. Defendant is hereby ordered to forthwith issue a rent credit to those class members who are still tenants in Dade County Public Housing and who have been billed for court costs without a judicial award, the credit to

equal each court costs charge previously assessed against each said tenant.

3. Defendant is hereby ordered to forthwith issue a credit to those class members who are no longer tenants in Dade County Public Housing who have been billed for court costs without a judicial award (and who although they were billed did not actually pay said court costs charge), the credit to equal each court costs charge previously assessed against each said former tenant. Defendant shall report to the Court the names of tenants credited pursuant to paragraphs 2 and 3 of this Final Judgment along with the amount credited within a reasonable time not to exceed 30 days from the date of this judgment.

4. Defendant is further ordered to submit to the Court within 30 days of the date of this judgment a plan to provide restitution of all court costs collected without authority of a judicial award from each class member who is no longer a tenant. The plan shall include identification of all such former tenants who paid the unauthorized court costs (including the amount paid) and shall set forth a method to notify and reimburse such former tenants. Counsel for plaintiff shall have ten (10) days thereafter to submit comments on defendant's proposed plan.

5. The Court retains jurisdiction to determine the award of attorney's fees and costs.

DONE AND ORDERED in Chambers at Miami, Florida this 3 day of April, 1989.

/s/ Eugene P. Spellman
UNITED STATES
DISTRICT JUDGE

cc: all counsel of record

APPENDIX 5

42 U.S.C. § 1437a. Rental payments

(a) Families included; amount

(1) Dwelling units assisted under this chapter shall be rented only to families who are low-income families at the time of their initial occupancy of such units. Reviews of family income shall be made at least annually. Except as provided in paragraph (2), a family shall pay as rent for a dwelling unit assisted under this chapter (other than a family assisted under section 1437f(o) of this title) the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the family's monthly adjusted income;

(B) 10 per centum of the family's monthly income; or

(C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

APPENDIX 6

24 C.F.R. § 913.103 Definitions

Tenant Rent. The amount payable monthly by the Family as rent to the PHA. Where all utilities (except telephone) and other essential housing services are supplied by the PHA, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the PHA and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Utility Allowance.

Total Tenant Payment. The monthly amount calculated under § 913.107. Total Tenant Payment does not include charges for excess utility consumption or other miscellaneous charges (see § 966.4 of this chapter).

APPENDIX 7

24 C.F.R. § 966.6 Prohibited lease provisions.

Lease clauses of the nature described below shall not be included in new leases between a PHA and a tenant and shall be deleted from existing leases either by amendment thereof or execution of a new lease:

(h) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court determines that the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant as a party to the lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.